

Amendment No. 2 to HB0918

Fitzhugh
Signature of Sponsor

FILED

Date _____

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Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 504*

House Bill No. 918

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-15-401, is amended by deleting the section in its entirety and substituting instead the following:

§ 39-15-401.

(a) Any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury commits a Class A misdemeanor; provided, however, that if the abused child is six (6) years of age or less, the penalty is a Class D felony.

(b) Any person who knowingly abuses or neglects a child under thirteen (13) years of age so as to adversely affect the child's health and welfare commits a Class A misdemeanor; provided that if the abused or neglected child is six (6) years of age or less, the penalty is a Class E felony.

(c)

(1) Any court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court either by summons or warrant. No arrest warrant or summons shall be issued by any person authorized to issue such a warrant or summons nor shall criminal charges be instituted against a child's parent, guardian or custodian for a violation of subsection (a) based upon the allegation that unreasonable corporal punishment was administered to such child unless the affidavit of complaint also contains a copy of the report prepared by the law enforcement official who investigated the allegation or independent medical verification of injury to the child.

(2)

(A) If the person pleads not guilty, the juvenile judge shall have the power of a judge of the court of general sessions to bind the person over to the grand jury as in cases of misdemeanors under the criminal laws of this state. Upon being bound over to the grand jury, the person may be prosecuted on an indictment filed by the district attorney general and a prosecutor need not be named on the indictment.

(B) On a plea of not guilty, the juvenile court judge shall have the power to proceed to hear a case on its merits without the intervention of a jury if the person requests a hearing in juvenile court and expressly waives, in writing, indictment, presentment, grand jury investigation and jury trial.

(C) If the person enters a plea of guilty, the juvenile court judge shall sentence the person under this section.

(d) Except as expressly provided, the provisions of this section shall not be construed as repealing any provision of any other statute, but shall be supplementary thereto and cumulative thereof.

(e) A violation of this section may be a lesser included offense of any kind of homicide, statutory assault, or sexual offense if the victim is a child and the evidence supports a charge under this section. In any case in which conduct violating this section also constitutes assault, the conduct may be prosecuted under this section or under § 39-13-101 or § 39-13-102 or both.

SECTION 2. Tennessee Code Annotated, Section 39-15-402, is amended by deleting the section in its entirety and substituting instead the following:

§ 39-15-402.

(a) A person commits the offense of aggravated child abuse or aggravated child neglect or endangerment who commits the offense of child abuse as defined in §39-15-401(a), or who commits the offense of child neglect or endangerment as defined in § 39-15-401(b) and:

- (1) The act of abuse or neglect results in serious bodily injury to the child;
or
- (2) The act of neglect or endangerment results in serious bodily injury to the child; or
- (3) A deadly weapon, dangerous instrumentality or controlled substance is used to accomplish the act of abuse, neglect or endangerment; or
- (4) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim.

(b) A violation of this section is a Class B felony; provided, however, that, if the abused, neglected or endangered child is eight (8) years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated or suffers from a physical disability, the penalty is a Class A felony.

(c) Nothing in this chapter shall be construed to mean a child is abused, neglected, or endangered, or abused, neglected or endangered in an aggravated manner for the sole reason the child is being provided treatment by spiritual means through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner thereof in lieu of medical or surgical treatment.

(d) This section shall be known and may be cited as "Haley's Law".

SECTION 2. Tennessee Code Annotated, Section 39-13-506, is amended by deleting subsection (b) in its entirety and by relettering the subsequent subsection accordingly.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2005, the public welfare requiring it.